

Remarks

In response to the Office Action mailed April 21, 2005, Applicant respectfully requests reconsideration. To further the prosecution of this Application, Applicant submits the following remarks. The claims as now presented are believed to be in allowable condition.

Preliminary Matters

The Examiner issued a Final Rejection on April 21, 2005, which Applicants respectfully suggest is inappropriate at this time. MPEP §706.07(a) states “ .. second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement ...”. Applicants respectfully submit that, with respect to the pending claims at the time, the amendment submitted on January 10, 2004 moved a limitation from claim 4 into claim 1. Accordingly, the Examiner’s new grounds of rejection submitted in the rejection of April 21, 2005 was not necessitated by Applicants amendment, nor by the submittal of an IDS, and therefore the rejection of April 21, 2005 should not have been a final rejection. Applicants request that the finality of the rejection of April 21, 2005 be withdrawn.

Rejections under §102 and §103

Claims 1-5, 8, 19-23 and 26 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,477,483 to Scarlat et al. (hereinafter Scarlat) and U.S. Patent No. 6,137,782 to Sharon et al. (hereinafter Sharon). Scarlat discloses, at column 2, lines 32-42, a service provider for remotely load-testing websites over the Internet using a hosted service. The service provider tests the website using a server farm. Sharon discloses a system for performing automatic network traffic analysis.

Claim 1 has been amended to further recite that a first system and a second system are used to provide load to a target and that the first system has a different owner than an owner of the target and an owner of the second system. This feature is not taught or suggested by the cited prior art. Scarlet provides a server farm including co-owned first and second systems. Sharon discloses traffic mapping of network traffic from agents. Neither Scarlet nor Sharon disclose or suggest a method of performing distributed load testing wherein differently owned systems are used to provide load to a differently owned target.

For the reasons stated above, claim 1 patentably distinguishes over the cited prior art, and the rejection of claim 1 under 35 U.S.C. §102(a) should be withdrawn. Accordingly, claim 1 is (now) in allowable condition.

Claim 19 has been amended in a similar fashion as claim 1, and is believed allowable for the same reasons as claim 1.

Because claims 2-5, 8, 20-23 and 26 depend from and further limit claim 1 or claim 19, claims 2-5, 8, 20-23 and 26 are in allowable condition for at least the same reasons.

Claims 6, 9, 10, 24, 27 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Scarlet and Sharon and further in view of U.S. Patent No. 5,721,906 to Siefert. (hereinafter Siefert).

Claims 6, 9, 10, 24, 27 and 28 all depend from claim 1 or 19 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejections of claims 6, 9, 10, 24, 27 and 28 under 35 U.S.C. §103 is believed to have been overcome.

Claims 7 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Scarlet and Sharon and further in view of Mercury White Paper (hereinafter Mercury)

Claims 7 and 25 depend from claim 1 or 19 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the

rejections of claims 7 and 25 under 35 U.S.C. §103 is believed to have been overcome.

Claims 11-14, 16, 29-32 and 34-36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mercury and Sharon.

Claim 11 has been amended to further recite that a first system and a second system are used to monitor a target and that the first system has a different owner than an owner of the target and an owner of the second system. This feature is not taught or suggested by the cited prior art. Neither Mercury nor Sharon disclose or suggest a method of performing distributed monitoring wherein differently owned systems are used to provide monitor services to a differently owned target.

For the reasons stated above, claim 11 patentably distinguishes over the cited prior art, and the rejection of claim 11 under 35 U.S.C. §103(a) should be withdrawn. Accordingly, claim 11 is (now) in allowable condition.

Claim 29 has been amended in a similar fashion as claim 11, and is believed allowable for the same reasons as claim 11.

Because claims 12-14, 16, 29-32 and 34-36 depend from and further limit claim 11 or claim 29, claims 12-14, 16, 29-32 and 34-36 are in allowable condition for at least the same reasons.

Claims 15, 17, 18 and 33 were rejected under 35 U.S.C. §103(a) as being unpatentable over Mercury and Sharon and further in view of Siefert

Claims 15, 17, 18 and 33 depend from claim 11 or 29 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejections of claims 15, 17, 18 and 33 under 35 U.S.C. §103 is believed to have been overcome.

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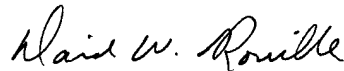
Conclusion

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' Representative at the number below.

Applicant hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-0901.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 366-9600, in Westborough, Massachusetts.

Respectfully submitted,



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Attorney Docket No.: EMP04-27

Dated: July 12, 2005